

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1922.02
COMPLAINT INVESTIGATOR: Connie Rahe
DATE OF COMPLAINT: May 24, 2002
DATE OF REPORT: June 28, 2002
REQUEST FOR RECONSIDERATION: yes/revised August 30, 2002
DATE OF CLOSURE: January 31, 2003

The original deadline for the complaint investigation report was June 21, 2002. Due to the need for additional information, the associate superintendent extended the deadline on that date to June 28, 2002. The response to the parties' requests for reconsideration was originally due on July 26, 2002. However, the deadline was extended until August 16, 2002, due to the associate superintendent being out of state from July 19 to 30. The deadline was extended a second time until August 30, 2002, upon the Department of Health's request for additional time to provide information requested by the associate superintendent.

COMPLAINT ISSUES:

Whether the Indiana State Department of Health and the Silvercrest Children's Developmental Center violated:

511 IAC 7-27-5(c) by failing to provide the parent with a copy of the case conference committee (CCC) report within ten business days after the date of the CCC meeting.

511 IAC 7-21-2 by failing to ensure that instructional services were provided by a licensed teacher and by allowing a paraprofessional to provide the instruction in the absence of a licensed teacher.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written.

FINDINGS OF FACT:

1. The Student is nine years old and is eligible for special education and related services as a student with autism spectrum disorder and a communication disorder.
2. The CCC convened on February 8, 2002. At the conclusion of the CCC meeting, the Complainant was provided with a copy of the *Case Conference Summary Report* and a proposed IEP. The Complainant signed and returned the IEP on March 6, 2002, but included several changes she wanted made to the IEP. Center staff met with the Complainant on two occasions in March to discuss the identified changes, but no formal CCC was convened, and no written report was issued from either of these meetings. As a result of the meetings, the IEP was amended to incorporate the changes requested by the Complainant; the changes were effective on or about April 1, 2002. The center did not provide the Complainant with a copy of the revised IEP until May 3, 2002.
3. Between December 10, 2001, and February 8, 2002, one of the classroom teachers was on leave from the center. Between February 24 and March 22, 2002, a second classroom teacher was on leave from the center. During these time periods, the Student's classroom teacher was given the additional responsibility

of completing assessments for some of the students assigned to the teachers who were on leave. The Complainant sent a letter to the center director, dated March 11, 2002, expressing concern that the licensed teacher assigned to the Student's classroom ("assigned teacher") was only in the classroom part of the day and that paraprofessionals were providing programming the rest of the day. The center director acknowledged, in his April 2, 2002, letter to the Complainant, as well as in the June 12, 2002, letter of response, that it is difficult for the center to find licensed substitutes and that interruptions in service have occurred due to the assigned teacher's absence from the classroom to cover other classes of teachers on medical leave. The department reports that covering the responsibilities for the absent teachers required the assigned teacher to be absent from the Student's classroom for "an hour or so each day," and that she provided instruction during the time she was present in the Student's classroom. The assigned teacher reports she "maintained [her] regular schedule in [the Student's] classroom," using lunch hour, planning time, and after-school hours to complete her additional responsibilities. Although requested, neither the department nor the center was able to provide objective documentation that a licensed teacher was in the classroom to provide instruction to students and provide direction and supervision to the paraprofessionals during the assigned teacher's absence from the classroom during the two time periods.

4. The Student's assigned teacher has been on medical leave since approximately early May 2002. Since that time, the elementary program supervisor has provided direction for the paraprofessionals who, according to the elementary program supervisor and the center director, have provided programming for the Student. Neither the center director nor the elementary program supervisor reports that the supervisor provided any direct instruction to the Student in the absence of the assigned teacher. The Student's IEP includes an annual goal of improving functional academic skills.
5. The Complainant asserts that the center failed to implement the following short-term instructional objectives: role-playing; tying shoes; typing name, address, and family names; and stabilization. The Complainant also asserts that the center failed to implement charting as required by the IEP that would document the Student's progress and failed to provide weekly reports from all of the Student's therapists. Although the CCC proposed an IEP at the February 8, 2002, CCC meeting and the IEP includes an initiation date of February 8, the Complainant's consent to the implementation of the IEP with her signature did not occur until March 6, 2002. The center began implementing this IEP while contemporaneously talking with the Complainant about her request to revise the IEP. A revised IEP was completed and implemented after the Student returned from the center's spring break on April 1, 2002.
6. Page 18 of the IEP is entitled *Lesson Plan #6*. It identifies a variety of activities that can be used with the Student to assist in learning new social behaviors. Included in this list of activities are "social stories, modeling of appropriate behaviors, and role playing." In the "Procedure" section of this page it states "[The Student] will be presented with an individualized social story that includes actual pictures that are specific to him." Role-playing is only one of the activities that staff can use to help the student develop new social behaviors. Role-playing is not included in any annual goal or short-term objective listed elsewhere in the IEP.
7. Page 25 of the IEP includes a short-term objective that the Student "will demonstrate improved dressing skills by tying his shoes." This objective relates to the annual goal of improving self-help skills. The center reports that it could not begin working on this short-term objective with the Student until the Student mastered the task of putting his shoes on without becoming aggressive. However, this task is not included as one of the short-term objectives listed for the annual goal. In the communication notebook entry dated May 30, 2002, center staff report that they have been working on the shoe-tying objective using the hand-over-hand method.
8. Pages 6 and 7 of the IEP identify a goal of demonstrating improved computer skills. The short-term objectives include:

- Using the computer keyboard to type his name;
- Using the computer keyboard to type the names of family members; and
- Using the computer keyboard to type his home address.

On June 3, 2002, the Complainant inquired about the status of the Student's typing his name, address, and names of family members and whether the Student still required hand-over-hand assistance. Center staff responded the same day, indicating that they had not been working with the Student on these objectives, but that they would start the next day. The communication notebook entry from center staff dated June 4, 2002, indicates the Student worked on typing his name, address, and the names of family members. The *IEP Activities* chart indicates that the Student was working on these objectives on June 7 and continued through June 20 (the last day of charting submitted).

9. On page 26 of the IEP, the short-term objective states: "[The Student] will demonstrate improved written communication skills while given tactile cues and stabilization at the wrist. (The adult places his/her hand on [the Student's] wrist." The center reports that, although center staff attempted to use stabilization, the Student was not ready for it at that time. Staff used hand over hand assistance until stabilization could be used successfully. On the *IEP Activities* chart beginning June 7, 2002, written communication activities have been coded as "PP" which, according to the charting code, stands for "Partial Physical." Next to the legend for this charting code is a handwritten notation "stabilization."
10. For the goals of improved self-help skills and improved fine/visual motor skills, the evaluation procedure for the short-term objectives is stated as "observation/charting." The Complainant understood that this meant that charting would be done for all of the identified objectives. The center reports that it meant that evaluation would be done by observing the Student's progress or by charting it. The Complainant subsequently asked the center to chart all of the short-term objectives, and the center began the daily charting process on June 7, 2002.
11. The unnumbered cover page of the Student's IEP states that "weekly progress notes from therapists" will be provided. The IEP provides that the Student is to receive occupational therapy "one time per week in group/individually and consultation," as well as speech therapy and recreational therapy in a group setting. Speech therapy is to be provided one time per week, and recreational therapy is to be provided twice a week. The progress notes were originally provided in the communication notebook, but upon the Complainant's request for separate weekly progress notes, the center began providing the progress notes in that format. The assigned teacher's affidavit states that "[the Student's therapy takes place in a group setting, with all of the therapists interacting with [the Student] at once" and "only one note is issued from each therapy session." However, the IEP does not indicate that a single progress report will be sent, and documentation reflects that the occupational and speech therapists frequently sent separate reports each week. The recreational therapist provided no weekly progress reports. Progress notes from the occupational and speech therapists were provided as follows:

February 26	OT	SLP
March 5, 12, 19	OT	SLP
March 26	spring break	
April 2	OT	SLP
April 9	OT	no report
April 16	OT	SLP
April 23	OT	no report
May 7, 14	OT	SLP
May 21	no report	SLP
May 28	OT	SLP
June 3	no report	no report
June 10	<u>no therapy due to field trip</u>	
June 18	OT	SLP

CONCLUSIONS:

1. 511 IAC 7-27-5(c) requires the school to provide a parent with a copy of the written report of the CCC meeting, either at the conclusion of the meeting or within ten business days after the date of the CCC meeting. The written report of the meeting is to include a copy of the IEP. Finding of Fact #2 reflects that, at the conclusion of the February 8, 2002, CCC meeting, the Complainant was provided with a copy of the CCC Report and proposed IEP. Therefore, no violation of 511 IAC 7-27-5(c) is found with respect to the February 8, 2002, CCC meeting. However, Finding of Fact #2 also reflects that the February 8 IEP was amended in the absence of a formal CCC meeting. The center did not provide the Complainant with a copy of the revised IEP until more than one month after the revisions had been incorporated into the Student's IEP. Although no formal CCC was convened as required, meetings were conducted and a revised IEP resulted as though the CCC had convened. Therefore, a violation of 511 IAC 7-27-5(c) is found with respect to providing the parent with a copy of the written report of the meeting and the revised IEP within ten business days of the meeting and changes. Further, the department and the center are reminded of the requirement of 511 IAC 7-27-4(c) that the CCC is the entity charged with the responsibility of developing, reviewing, and revising a student's IEP. Although non-compliance with this requirement is not alleged in this investigation, such non-compliance occurred when staff met with the parent to discuss and incorporate the revisions in the absence of a properly convened and constituted CCC meeting.
2. 511 IAC 7-21-2 requires that special education and related service personnel be appropriately licensed or certified to provide the services for which the individual is employed. A licensed teacher must provide instruction in academic areas, although appropriately trained paraprofessionals may work under the direction and supervision of a licensed teacher to provide remediation and reinforcement in academic areas that have previously been introduced by a licensed teacher. Finding of Fact #3 indicates two periods of time between December 2001 and March 2002 in which the Student's assigned teacher covered some of the responsibilities of two other teachers. There are contradictory reports of whether the assigned teacher was absent from the Student's classroom, leaving instruction to the paraprofessionals. Neither the department nor the center was able to provide objective documentation to demonstrate that a licensed teacher was in the classroom providing instruction to the Student or supervision for the paraprofessionals during the time periods in which the assigned teacher was covering other responsibilities. Finding of Fact #4 also reflects that a licensed teacher was unavailable to provide instruction or supervise paraprofessionals during the assigned teacher's lengthy absence beginning in May 2002, resulting in paraprofessionals providing programming and instruction to the Student. Therefore, a violation of 511 IAC 7-21-2 is found.
3. Findings of Fact #5 and #6 indicate that the IEP included information that the Student would be engaged in activities to assist in learning new social behaviors. One of the activities that can be used is role-playing; however, it is not a required activity nor is it included in any short-term objective. The staff is free to utilize any of the activities listed. Therefore, there is no violation of 511 IAC 7-27-7(a) should staff choose not to utilize role-playing as one of the activities.
4. Findings of Fact #5 and #7 indicate the Student's IEP contained a short-term objective of demonstrating improved dressing skills by tying his shoes. The objective was initiated at the end of May 2002. Therefore, no violation of 511 IAC 7-27-7(a) is found with regard to implementing this short-term objective.
5. Finding of Fact reflects that the Student's IEP included short-term objectives of using the computer keyboard to type his name, address, and the names of family members. Although the Complainant asserts these objectives were not implemented, Finding of Fact #8 demonstrates that these objectives were initiated on June 4, 2002. Therefore, no violation of 511 IAC 7-27-7(a) is found with regard to these short-term objectives.

6. Finding of Fact #9 indicates the IEP includes a short-term objective of improved written communication skills while given tactile cues and stabilization at the wrist. When center staff initially attempted stabilization, it was unsuccessful, and the staff utilized hand-over-hand assistance until such time that stabilization could be used effectively. Stabilization is now being used with the Student. Therefore, no violation of 511 IAC 7-27-7(a) is found with respect to use of stabilization.
7. Finding of Fact #10 establishes that the evaluation procedure for the self-help and fine/visual motor skills goals is stated as "observation/charting." The Complainant and the center had a different understanding of this procedure. This difference of opinion has been resolved, and daily charting is now being completed as the Complainant requested. Therefore, no violation of 511 IAC 7-27-7(a) is found with respect to the charting requirement.
8. Finding of Fact #11 demonstrates that the IEP provided for recreational, speech, and occupational therapies and required weekly progress notes from the Student's therapists be provided to the Complainant. Progress notes were routinely sent by the occupational and speech therapists, but there are several weeks in which progress notes from one of the therapists was not provided to the Complainant. The recreational therapist provided no weekly progress notes. Therefore, a violation of 511 IAC 7-27-7(a) is found with respect to the weekly provision of therapy progress notes.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Indiana State Department of Health and the Silvercrest Children's Developmental Center shall:

1. Ensure that a licensed teacher and not a paraprofessional provides direct instruction to students. An assurance statement that the center will ensure a licensed teacher is in the classroom to provide instruction and supervise any paraprofessionals when the assigned teacher is unavailable shall be submitted to the Division no later than September 13, 2002.
2. Reconvene the CCC for the Student to determine the nature and amount of compensatory services needed as a result of the interruption due to the absence of a classroom teacher. The CCC Report/IEP must clearly document the CCC's consideration and determination regarding compensatory services. The CCC shall also clarify the provision of therapy progress notes. The CCC Report/IEP must clearly state whether individual progress reports shall be provided weekly by each of the therapists working with the Student or if a single weekly progress report will be issued by one of the therapists providing an update on each of the therapies. Finally, the IEP must include a statement of how and how frequently the Complainant will be informed of the Student's progress toward the annual goals, including information on the extent to which the Student's progress is sufficient to enable the Student to achieve the goals by the end of the 12-month period. The CCC Report/IEP must be submitted to the Division no later than September 16, 2002.
3. Ensure that therapy progress notes are provided to the Complainant on a weekly basis as determined by the CCC Report/IEP. An assurance statement and documentation that therapy progress notes have been provided on a weekly basis between September 1 and October 30, 2002, shall be submitted to the Division no later than November 8, 2002.
4. Provide the Complainant with a cumulative progress report for recreational therapy from April through August 2002. A copy of the progress report and documentation of receipt by the Complainant shall be submitted to the Division no later than September 16, 2002.

5. Ensure that IEPs will not be revised in the absence of a properly constituted CCC. An assurance statement that the department and center will ensure that a properly constituted CCC is convened whenever a parent or the agency propose to revise a student's IEP shall be submitted to the Division no later than September 16, 2002.